

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAX EUGENE BAUGH,

Defendant-Appellant.

UNPUBLISHED

May 12, 2009

No. 284248

Wayne Circuit Court

LC No. 07-015421-FC

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to six to 20 years in prison for armed robbery, and to a consecutive two-year term for felony-firearm. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Complainant Christopher Richardson testified that his brother gave him \$250. Richardson purchased approximately \$100 in clothes, and went to a friend's home. Apparently, he took the remainder of his money out of his pocket while he was outside the home. At the same time, he noticed defendant, defendant's mother, and co-defendant Ronald Billups seated in an automobile. He had known defendant for a few months. Richardson, who had borrowed a bicycle from his friend, began to ride slowly down the street. Defendant and the others drove along side him. Richardson said he felt someone place a gun to the back of his head, turned around, and saw defendant pointing an automatic handgun at him. Defendant demanded Richardson's money, and Richardson, who maintained that he was afraid he would be shot if he refused to comply, handed the money to defendant. Defendant then returned to his car, and he and the others drove away.

Defendant first maintains that the prosecutor failed to provide sufficient evidence to support his armed robbery conviction. We disagree.

We review a defendant's allegations regarding insufficiency of the evidence *de novo*. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* However, we should not interfere with the jury's role of determining the weight of the evidence or the

credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1202 (1992). Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and the reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences fairly can be drawn from the evidence and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of armed robbery are an assault, combined with a felonious taking of property from the victim's presence while the defendant is armed with a weapon as described in the statute. MCL 750.529; *Carines, supra* at 757. Richardson's testimony, if believed, established the elements of the offense. Defendant argues that Richardson's testimony was insufficient because it was uncorroborated, and that it was not credible because it contradicted Richardson's earlier statement to the police and his preliminary examination testimony. However, any discrepancies in Richardson's testimony were explored in direct examination and on cross-examination. The jury chose to believe Richardson's testimony, and was in a better position to judge his credibility. Given we will not usurp the jury's role of determining the weight of the evidence or the credibility of the witnesses, *Wolfe, supra* at 514-515, we find that the prosecutor presented sufficient evidence to support the convictions.

Defendant next maintains that his sentence for armed robbery constitutes cruel and unusual punishment. We disagree.

Defendant's sentence was within the sentencing guidelines. A sentence within the guidelines must be affirmed on appeal unless the trial court erred in scoring the guidelines or relied on inaccurate information. MCL 769.34(10). This limitation on review is not applicable to claims of constitutional error. *People v Conley*, 270 Mich App 301, 316; 715 NW2d 377 (2006). However, a sentence within the guidelines range is presumptively proportionate, *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987), and a sentence that is proportionate is not cruel and unusual punishment. *Terry, supra* at 456.

Defendant has presented nothing to rebut this presumption. Defendant has an extensive juvenile criminal history, a substance abuse problem, and apparently has never been employed. According to the PSIR, defendant failed to comply with many of his previous conditions of probation, including obtaining employment, a GED, and community service, or to repay any of his previous court costs and fees. Defendant committed the instant offense while on probation. Defendant has not shown that his sentence constituted cruel and unusual punishment.

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens